

To:

Judge, U.S. District Court  
to Clerk of Court

**FILED**

DISTRICT COURT OF GUAM

DEC - 6 2005

Fr:

Ernesto M. Alvarez  
CF0467-02

**MARY L.M. MORAN**  
**CLERK OF COURT**

Re:

Petition for Habeas Corpus Relief

**CV-05-00036**

Your Honor,

My Constitutional rights were violated by the state. I was charged with illegal and defective indictments. Because of that in regards to my confinement, I was unlawfully committed. I was in lockdown for 3 years now and my 8th amendment rights were violated.

On the other hand, if legislation directs the granting of an emoluments or privileges to an individual or class without any purpose, expressed or apparent, to serve the public welfare thereby, the courts have a duty to declare such legislation unconstitutional.

Your Honor, I'm appealing to your honorable court because I already exhausted my petition from the state. (See: attached documents).

I believe the Chambers of judge Steven S. Marquez sealed the records of my case. But the various defects in trial proceedings in my letter will support the under lying facts of the case.

Defendant insisted that he was innocent and yet he couldn't stand trial. What was the solution for such an impasse? The law, in its wisdom provided one. It is called the Alford Plea. It permitted the defendant to assert that he was innocent, but he was willing to plead guilty in order to avoid the ordeal, expense, and uncertain outcome of a trial. It was the perfect instrument to extricate us from our predicament. But it required the agreement of the prosecutor, and then the approval of the court.

The government is not permitted to harass and oppress individual for multiple prosecutions or punishment for same crime. The statute may be valid but the classification of an

offense is void. They aggravate the offense. It violates the double jeopardy rule of the fifth amendment of the United States Constitution. It is inadmissible evidence in a court of law.

MAUD TO TRUTH Note:

2005 A DEC 8

Therefore any punitive impact the statutorily might have on the defendant will impinge upon the purpose of the ex post facta, bills of attainder, double jeopardy, and cruel and unusual punishment clause.

In spite of that, I was sentenced (45) years, with all but three (3) years shall be suspended based on DOC computation, I'm released Oct. 13, 2005, but IAC put a detainer on me, served a warrant for my arrest and I was charged of Section 237(a)(2)(A)(iii) of Immigration and Nationality Act based on Superior Court conviction and felony charged.

Your Honor, I'll have no doubt whatever your decision may be, I'll be satisfied, I'll leave everything in your sense of fairness.

Dated this 27th day of November, 2005.

Sincerely,

by: 

ERNESTO H. ALVAREZ

### Invasion of Constitutional Rights:

The Chamorro people been many times over. Guam doesn't have Constitution and the AG and Judiciary system considered the 14th amendment and Federal law as a mere nonentity. Illegal and defective indictments, it's long been unchallenged in Guam. The AG aggravates the offense and successive prosecution arising out of the same transactions is a denial of due process.

To shrink from the truth is to limit our freedom. This applies not only in National as well as personal scale. When the truth is hidden by the government of a democratic society, that society becomes fatally flawed until the truth is revealed.

Your Honor,

In my understanding, the role of Federal is to see to it that every state uphold the constitution and follow the law. Guam need Federal guidance for the public good.

When there's a long train of abuses and usurpations pursuing invariably the same Object, evinces a Design to reduce them.

LETTERS SENT

CONSTITUTIONAL CHALLENGE

1. ETHICS COMMITTEE  
2. OFFICE OF THE ATTY. GENERAL - DOUGLAS B. MOYLAN. 3. ATTY. JAMES M. MAHER  
4. PHILIPPINE CONSULATE - MR. GIL VILLAMAN  
5. KUDAN GO M. VILLENEVE  
6. PDN - DAVID CRISTOBAL, GO. MAI. MAI  
7. CORP. DAVID GUITRUGUA  
8. GOV. FELIX CANAUCHO  
9. GUAM LEGISLATURE - ATTY. THERESA TORLAJE  
10. PUBLIC DEFENDERS SERV. CORP. - ATTY. JANE KENNEDY  
11. SUPREME COURT OF GUAM - CHIEF JUSTICE CARBULLIDO  
12. MAYORS COUNCIL OF GUAM - ALL MAYORS 3/5/05  
13. U.S. ATTORNEY 3/8/05  
14. HON. ALBERTO C. LAGORENA III - 3/9/05  
15. FBI 3/14/05  
16. GCC - CRIM. NURS. ACADEMY - 3/15/05  
17. DISTRICT COURT OF GUAM - US DIST. COURT  
18. THE PUBLIC GUARDIAN - 3/18/05  
19. ETHICS PROSECUTOR - 3/23/05  
20. SEN. LOU LEON GUERRERO - 3/25/05  
21. ATTY. SHAPIRO - 3/27/05  
22. SEN. EDDIE CALVO - 3/30/05  
23. ACLU - 4/01/05  
24. SEN. JOANNIE BROWN - 4/04/05  
25. HON. MADELEINE BORDALLO - 4/06/05  
26. 9TH U.S. CIRCUIT CT. OF APPEALS - 4/06/05  
27. SEN. ADOLPHO PALACIOS  
28. RUTH & SUSAN - INFIRMARY  
29. PHILIPPINE CONSULATE  
30. PRES. GEORGE BUSH - 4/20/05  
31. SEC. GENE NORTON  
32. ETHICS COMMITTEE  
33. REP. RICHARD DOMBO - 4/28/05  
34. PRES. GEORGE BUSH - 5/01/05  
35. SUPREME CT. OF GUAM - CHIEF JUSTICE CARBULLIDO  
36. PHILIPPINE CONSULATE  
37. SEN. MARK FORBES - 6/07/05  
38. SEN. RAY TENORIO - 6/09/05  
39. SEN. ROBERT KUTZKE  
40. SEN. FRANK AGUON - 6/08/05  
41. ETHICS PROSECUTOR - ATTY. TOLENTINO  
42. DR. KIFFER - PSYCHOLOGIST  
43. HON. ALBERTO C. LAGORENA III  
44. SUPREME CT. OF GUAM - CHIEF JUSTICE CARBULLIDO  
45. GUAM LEGISLATURE - ATTY. THERESA TORLAJE  
46. SEN. EDDIE CALVO  
47. FBI  
48. US IMMIGRATION AND NATURALIZATION  
49. DISTRICT COURT OF GUAM  
50. FBI  
51. US IMMIGRATION AND NATURALIZATION  
52. 9TH U.S. (DIST) CIRCUIT COURT OF APPEALS  
53. SUPERIOR COURT OF GUAM - APPEAL ORDER CF046702  
54. GUAM JUDICIAL COUNCIL BOARD  
55. ATTY. MITCHELL THOMPSON  
56. ETHICS PROSECUTOR - ATTY. TOLENTINO

To: Chief Justice Correllido

Supreme Court of Guam

Fr: Ernesto M. Alvarez

CF0467-02

Re: Review De Novo

Your Honor,

I would like to request an evidentiary hearing on my case. That the hearing judge considered improper evidence in making the determination. The proceedings are invalid on its face.

#### Various Defects in trial Proceedings

##### 1. Violation of the Constitution:

When the Attorney General filed an illegal or defective charges against the accused, it violated defendant's substantial rights, the rights and immunities secured and protected by Constitutional Amendment 14 and Federal Law.

Statute undertaking to legalize criminal proceedings of a court, had without proper jurisdiction, is unconstitutional and void, being a deprivation of liberty otherwise than by the law of the land. *Mo - State v. Doherty*, 60 Mass. 4.

The government is not permitted to harass and oppresses individuals for multiple prosecution or punishments for the same crime.

Multiple prosecutions or punishment doesn't apply in the same crime. It only applies ex separate crime. Because the burden of proof is for the prosecutor to prove that there were two separate crime.

##### 2. Amendment = C10-16-02)

My original charge should only be attempted murder (3 counts). Nothing more. The court should only determine the guilt or innocence on the charge. The punishment should only determine the guilt or innocence on the charge. The punishment should only be one,

in minimum, medium and maximum. It depends upon the severity of the offense. Accused should not receive two separate punishments for two separate acts arising out of the same conduct.

But instead, I was charged with aggravated offense. It's been amended and repeated.

According to the constitutional provisions; when the prosecutor has a choice of charging a defendant for the same offense under two statutes, one imposing greater penalty than the other, the decision to charge with greater penalty is the proper prosecutorial discretion that does not violate defendant's right to due process of law.

It means, I cannot be charged with lesser penalty charges of aggravated assault, illegal possession of firearm and without specification. They're just elements of the crime. Why?

Double jeopardy: Where a lesser offense is a necessary ingredient or component part of the principal or greater offense and emanates from the same transaction, then conviction or acquittal of the lesser, bars further prosecution for the greater crime. State v. Wolf (1966)

#### 3. Validity of indictment: (10/2002)

When my case was placed to a grand jury trial, the three attempted murder charges became two attempted murder charges. I was acquitted by the grand jury on Tag and a attempted murder charge. The charges were amended and repeated for the second time and this invalidates the indictment, and (and) the court loses the power to try the case, and because the indictment is an aggravated offense. It is inadmissible evidence.

#### 4. New Jury assailed: (7/2005)

After judge Unpingco learned of my constitutional challenge and when he read the indictment, he said all the charges were the same crime, and the indictment is nothing and instructed the jury just to determine guilt, but judge Unpingco didn't quash the prosecution, however, it gives me immunity.

Nonentity under laws repealing former statutes: When a statute repealing former laws, either expressly or by implication, but making the same offense punishable, is for any reason, ex post facto as to offenses committed before its enactment, one who committed the offense before the new law went to effect cannot be convicted under either the old or the new, the former having been repealed and the latter being void as to

that offenses, and such offenders must be discharged. U.S. - In re Medley, Col. 103 ect.

5. Validity of trial proceedings:

The charges brought against me are inadmissible as evidence in courts of law.

Questions before court: It is the duty of the court, in the control of its proceedings, to see to it that no person shall be subjected to the expense, vexation, and confinement of a trial for a criminal offense unless the charge has been investigated and a reasonable foundation shown for an indictment or information. U.S. v. Ferris &ha DCNY 1881, FF 343

1. The court failed to quash the prosecution.
2. The appointed counsel failed to file a 'NO EVIDENCE motion' based on a defect in the document, upon discovering that the charging statute were the wrong one, certifying it for use in a hearing.
3. The prosecution failed to dismiss the indictment with prejudice, withdrew the case and justice has been perverted. Because the public prosecutor is not just to convict but to act in the interest of justice.

6. Validity of guilty plea: (I) plea agreement I signed).

That on 7-22-05, defense counsel Atty. Thompson by phone spoke to me. He said that prosecutor Atty. Diane Corkitt is offering a plea: (3) year time served and deportation. He advised me to take it.

That on 7-23-05, Atty. Thompson came to visit me at DOC' with a plea-agreement. He explained to me page 2 # 5(a) ... charge of attempted murder 1st Degr. the Defendant shall be sentenced (3) years imprisonment at 'DOC'; with all but three (3) years shall be suspended...., and on page 7, letter (j). If and when the Defendant is deported .... all remaining .... terms and conditions .... shall be suspended.

That on 7-27-05, a plea-agreement hearing, at the holding cell Superior Court, Atty. Thompson said that the judge made changes, that I cannot return to Guan or any US territories for 20 years. The rest of the conditions of the plea, he said, ignore them.

Atty. Thompson testified the reason he asked one month allowance before sentencing is because it takes two weeks for INS to stamp the deportation papers.

Later on Atty. Thompson said that the judge made another change and we waited one hour for Atty. Corbett to typed it down. When Atty. Thompson brought me the plea, on p. 7, letter (j) it says, 'If the defendant is not deported, the defendant will serve fifteen (15) years at the Department of Corrections. Then, I argue about it with Atty. Thompson, I even asked, why act in lesser charge and lesser sentence. They've offered me 12 years in the past, but Atty. Thompson said, it doesn't matter, you'll be deported.'

7. Voluntariness of confessions: (Atty. Thompson said how to make an admission)

'So when Your Honor asked me to make a declaration, I said, there's a victim, he was injured, there were witnesses and I was present at Mariposa Club. During flight, when I was subdued by the police, they found a gun inside the car. At Agat precinct, I was interrogated by the police and I made my statement. Anyway, the statements I gave were all on the discovery and the evidence suppressed by prosecution and submitted on July 13, 2005.'

'But in guilt, there must be a union of act and intent. A guilty act and a guilty intention, without specific intent, it is not sufficient to convict a person of attempted murder charge.'

'There is no malice, according to the witnessess at the scene of the crime. No pre-meditation and deliberation to commit the crime. As far as psychology is concerned, it would be in the province of Dr. Kiffer, the psychologist and Dr. Ashe, the psychiatrist to reach a conclusion as to whether at the time of the shooting, the defendant lacked substantial capacity to comport his behavior to the requirements of the law, by reason of mental disease or defect, and both doctors found me under delusion during the time of the offense.'

'According to Dr. Kiffer, possibly he's (suffusing) experiencing stress-related amnesia, depression and sleep deprivation which is one of the criteria for not guilty by reason of insanity.'

'According to Dr. Ashe, "You may be competent now, but you may not be competent during the time of the offense."

'Because I was worried, at the holding cell after the hearing, I asked Atty. Thompson again about the changes of wording at the plea-agreement, "Why did Your Honor do that?" He said, "He doesn't want you to be running around the island, to show power,"

To tell everyone he convicted you.'

I entered into a plea because the jury is running the risk of convicting me for all the wrong reasons. Because the indictment is void & the AG is asking for a void proceeding, therefore the judgment is void. Although the constitution doesn't say that the court or jury can ratify a fraud. A fraudulent trial.

I entered into a plea under duress because I've been on lockdown status for over two years and nine months now and just to end my ordeal, it's an undue burden to me.

I entered into a plea because I feel I'm denied of due process and fair trial.

The plea-agreement regardless of what language it uses constitute multiple punishment. It is harsh and oppressive, cruel and unusual. It increases the punishment and that invalidates the plea. It is an ex post facto because it works for the defendant's disadvantage. It violates the 5th amendment of the Federal Constitution on double jeopardy grounds. Some judges are oppose to a plea agreement.

#### 8. Double Jeopardy:

It was defined as, 'No person shall be charged twice for the same offense.'

Even I have entered into a plea guilty on two Duarte attempted murder charge, but because I was acquitted by the grand jury on Tagorda charge. The Duarte conviction is void. I cannot be convicted on any attempted murder charge. It would be in violation of double jeopardy rule of the 5th amendment of the Federal Constitution, that says; Any prosecution for and a conviction or acquittal of part of a single crime is a bar to any subsequent prosecution based upon the whole or any part of the same crime. State v. Biscickhead (1962) 256, NC 494, 124 SE 2d 888, 6 A 14 R 3d 888. So there's nothing in the indictment to convict me. That's what happened when you treat the same crime as a separate crime.

#### 9. Validity of judgment of conviction or sentence:

The court may be without power or authority to enter declaratory judgment.

The court must not issue order or judgment which is beyond its power, or authority or in excess of jurisdiction, and an order or judgment is erroneous.

Therefore the sentence is unlawful. Judgment must be just and proper as required by the case.

10. Lack of jurisdiction of the trial court.

The legislature will not allow an amendment as a matter of substance to prejudice the accused.

1st amendment is during arraignment, the proper charge of attempted murder (3 counts) were replaced by aggravated offense, with greater and lesser penalty charges.

2nd amendment is in the hands of grand jury. The (3) attempted murder charges was reduced to (2) attempted murder charges with lesser penalty charges.

3rd amendment is after a new jury was assembled when judge happens to answer the indictment of the same crime. Expressly or by implication making the same offense punishable *ex post facto*.

4th amendment is the plea agreement. Defendant entered into (1) attempted murder conviction and the rest of the charges was dropped.

According to the Constitution: Any material change invalidates the indictment and the court loses the power to try the case.

No court tribunal is competent to try the offence.

11. Corruption of prosecuting authorities or their improper conduct.

No one at the Office of the Attorney General knew how to classify an offense when it comes to same crime. The AG applied malicious prosecution by aggravating the offense. It's an invasion of Prosecutorial discretion. The Public has no right over.

The constitutional law called it, 'Prosecutorial vindictiveness', successive prosecutions for crimes arising out of the same transactions constitute harassment in violation of due process of law.

12. Use of false, prejuidice or coerced testimony.

In magistrate's complaint, Atty. Trish R.S. Pda sworn under perjury.

The witness Danilo Pairea didn't make the statement as revealed by the grand jury proceedings, and it became the basis of my excessive bail of \$300,000 dollars.

A Trial which officer of the state use as a means and contrivance to secure a conviction and deprive accused of his liberty through the deliberate deception of court and jury by the presentation of evidence known to be perjured.

3. Infringement of rights in connection with preliminary proceeding or hearing:

It is unlawful to commit any person when his substantial right has been violated during a preliminary examination. *Herbst v. Soc. of Sacramento County* (1981) 3d Dist.) 117 Cal. App. 3d 661, 72 Cal. Rptr. 850, 19 A.R. 4th 1276.

Real question... is whether the person accused has been deprived of a substantial right by reason of the charge. *Cat-Hopple v. Edinburg* 263 P857, 860, 28 Cal App. 558.

4. Suppression of evidence:

The government violated the rules of evidence. The government is not allowed to suppress evidence that the defendant can use in his defense. The prosecution on July 13, 2005 filed my statement I gave to the Police on Oct. 15, 2002. The prosecution withheld the evidence to the grand jury. The jury suspected that I'm surrounded at the bar area of Mariposa Club. The statement shows that the victim were the first aggressor and it's a self-defense. After two years and nine months before the prosecution filed the evidence the defendant was prejudiced.

5. Failure to confront accused with adverse witness:

Off. Chavez arresting off. didn't testify during grand jury procedure.

The prosecution filed an additional witness hints on July 13, 2005 in which the prosecution failed to file them on October 2002 during the grand jury procedure.

This is the most unbelievable, incredible, egregious breach of professional ethics.

Through deception, the prosecution withheld evidences that they can use in the next trial when they realized that they will be in the case. All they have to do is ask for a 'dismissal without prejudice' then they'll file the evidence they've suppressed.

The case will become a roller-coaster of re-filing and dismissal of the case. The trial becomes 'unreal', in 'real trial' we're not supposed to deal in surprises. The AG used and abused the court for this purpose. Decision of 'without prejudice' is not supposed to be commonly used in court but seems standard in Guan Courts. Judge decides whether right or wrong is a right decision and is final, otherwise it shows that the trial judge cannot make up his mind and cannot make decision. Even how painful,

it is to accept, lack of evidence is dismissed. It's not the fault of the court. It's how the police build the case, whether it will fly. A charge must have sufficient standard of guilt. Evidence that will point the offender, motive, probable cause, witness, etc...

16. Demoralization of the trial by a mob:

People can get committed to their position and break the rules.

2-05-05. Closed door hearing. I informed your Honor, that Atty. Dianne Corbett and Atty. Maher were in collaboration and in conspiracy. At 'DOC', I asked defense counsel Atty. Maher, 'Why are you prosecuting me?' You said / brought the gun to Mariposa Club, you said / shot three people. You said / will serve time.' He said, 'I'm working for your best interest. I communicated with Dianne Corbett seven times. She said you will serve time. You brought the gun to Mariposa. You shot three people.' I told the court that they speak the same language.

Defense counsel, instead of defending defendant against the indictment, law and the constitution, they're using it against him.

I've been harassed by my defense lawyer for over two years just to get into a plea-agreement. It is a trial-by-Ordeal, not a trial in court in which the constitution guarantees.

17. Denial or granting of continuance:

For over a year, defense counsel Atty. Van De Veld delayed the trial by means of continuances. Unwilling to defend my case. Disintegrated. Atty. Van De Veld withdrew from my case during trial, and the trial proceedings was reduced to a farce.

18. I wrote two letters addressed to judge Steven S. Ungarino regarding ADA's Atty. Fisher and Atty. Van De Veld's incompetency and dishonesty.

1. Memorandum RE: Appointed Counsel

I. Malpractice

II. Deprivation of Speedy Trial

2. Ineffective Assistance of counsel

1. Counsel's failure to communicate with client

2. Failure to assert relevant facts

3. Waiver of speedy trial without client consent or knowledge

4. Failure to assert defense

19. Delay-on-trial:

The prosecution and defense lawyer were contributory in delay-in-trial. Either delay was occasioned by negligence or bad-faith on part of government or defendant was denied right to effective assistance of counsel. Miscellaneous delays were excessive. It's more than two years and nine months now; delay between filing of original indictment and bringing defendant to trial were not possible. They don't attack each other to proceed. Just delay-on-trial alone I should be discharged. The delay-in-trial is unreasonable as a matter of law.

20. The right to a jury trial or waiver thereof:

Every time I asked my defense counsel Atty. Thompson of something, he'll say, 'I'll ask the AG, I'll tell the AG'; I said, 'I wanna waive my jury trial?' He said, 'I'll ask the AG, I've never done it before; The government has to agree! I almost ask Atty. Thompson, 'Who do you represent?'

21. Abuse of Person in Authority:

10-45-02 Approx. around 4:00 A.M. I asked Ofc. Chauzy, arresting Ofc., 'How did you arrived on all those charges?' Oh, it's just like that, the AG will be dismissing some of them,' he said.

When Atty. Maher visited me at 'DOC', and I mentioned to him my improper charge, with greater and lesser penalty. He said, 'it's legal here in Guam'; and at the holding cell, Superior Court during competency hearing on 12-03-04, and I repeated to him about the improper charges, he said, '9th circuit, O.K., if.' Defense counsel should defend and protect the rights of his clients and try not to lie.

Several times I was threatened by Atty. Van De Vela that if I don't enter to a plea my sentence would not be less than 150 years.

According to Atty. Thompson and Atty. Van De Vela, I may not get convicted of an attempted murder charge, but Atty. Thompson repeated two times, 'You will lose, you will lose, you will serve time. You'll be convicted of aggravated assault, possession of an unregistered firearm and without identification and the judge will be forced to sentence you,' and the way he describe it, it's in the range of reclusion temporal

to reclusion perspectives, 20 to 30 years.

22. 8th Amendment:

The court is duty bound by the Eighth Amendment.

Sir: Notice I gave to Atty. Thompson, he promised to submit it in court as an exhibit. I didn't get any judicial relief.

23. The question of deprivation of a fair trial:

I believe that judge Steven S. Uneringo had acurrdone any ruling in discharging an accused on double jeopardy grounds. He has quashed the prosecution on same crime.

The appointed counsel were all irresponsible, incompetent and dishonest.

The charging statute is so vague and inadequate that the accused is unable to know.

Discrimination in the application of Statute. Evidence inadmissible in courts of law.

Prosecutorial and judicial overreaching. Gross negligence and interpretive misconduct.

The AG and Court judicial systems violates the constitution by betrayal of Public Trust.

Defendant was denied of due process and a fair trial.

The jury is running the risk of convicting the defendant for all the wrong reasons.

Defendant's Constitutional rights were violated by the state.

The procedure is defective on its face. It's untrue to fight this case in court. Defendant is running the risk of possible conviction and long period of incarceration.

24. Denial of fair-trial because of prejudicial pre-trial publicity.

People heard, watched and read media reports.

The media covered the incident during the night in question.

Based on the foregoing, I would like to request for the Disposal of this case.

Dated this 30th of September, 2005.

Sincerely,

by Ernesto M. Alvarez

ERNESTO M. ALVAREZ